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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
TOWN OF EATONVILLE,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-87

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two \$250 civil penalties for the alleged violation of Sections 9.03(b), 8.05(1), and 8.02(3) of Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana (presiding), at a formal hearing in Tacoma, Washington, on September 22, 1978.

Appellant was represented by its attorney, Hollis E. Barnett; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes

DAA/LB

1 these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the
5 Board a certified copy of its Regulation I and amendments thereto
6 which are noticed.

7 Section 8.05(1) makes it unlawful to cause or allow any outdoor
8 fire other than land clearing or residential burning without approval
9 from respondent.

10 Section 8.02(3) prohibits any outdoor fire containing garbage,
11 petroleum products, paints, and plastics, or any substance which
12 normally emits dense smoke.

13 Section 9.03(b) makes it unlawful to cause or allow the
14 emission of any air contaminant, including smoke, for more than
15 three minutes in any one hour which is of an opacity of 20% or
16 more.

17 Section 3.29 provides for a civil penalty of up to \$250 per
18 day for each violation of Regulation I.

19 II

20 Appellant operates a sanitary landfill known as the Eatonville
21 Refuse Site located about four and one-half miles from Eatonville.
22 The next nearest dump site is twenty miles away at the Pierce County
23 site.

24 On March 21, 1978 respondent's inspector saw a 100 foot long
25 smoldering fire burning along the refuse bank face at the dump site.
26 Paint cans, oil cans, paper, wood, plastic and garbage were observed

27 FINAL FINDINGS OF FACT,

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1 in the fire. After notice of the fire was given, the town's fire
2 truck arrived and put out the fire. For the above event, appellant
3 was sent a notice of violation and was issued a \$250 civil penalty
4 for allegedly violating Sections 8.05(1) and 8.02(3) of Regulation I.

5 III

6 On September 6, 1978, respondent's inspector visited the
7 refuse site and there saw garbage, petroleum products, paint cans
8 and oil cans in a smoldering fire. The inspector also recorded smoke
9 of 100 percent opacity for eleven consecutive minutes from the site.
10 After contacting the town, the inspector was informed that the fire
11 department had put out a fire at the site earlier that day. For
12 the event, appellant was sent a notice of violation and was assessed a
13 \$250 civil penalty for allegedly violating Sections 8.02(3) and 9.03(b)
14 of Regulation I.

15 IV

16 Years ago, the customary method used to dispose of refuse was
17 to simply push it over the bank and set it on fire. Such methods have
18 been abandoned in the face of new laws, and are not allowed by the
19 appellant. However, fires periodically do occur, possibly because
20 of unsupervised users at the site. Appellant has contracted with
21 certain persons to notify the town in the event a fire is discovered.
22 Once so informed appellant responds to put out the fire and notifies
23 respondent. During 1978, it has cost the town \$500 to \$1,000 each
24 month to extinguish fires at the site.

25 V

26 Appellant has applied for and should shortly receive money to

27 FINAL FINDINGS OF FACT,
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1 purchase facilities and equipment to serve the site. With the
2 equipment, appellant can properly operate the site and hopes to
3 minimize the incidence and duration of fires.

4 VI

5 An earlier stipulated settlement and order between the parties
6 provides that fire or smoke be reported to respondent and such fires be
7 extinguished by appellant. Respondent's inspectors were to report any
8 observed fires to appellant and such fires were to be extinguished
9 by appellant. The stipulated order is not a variance from the provisions
10 of Regulation I.

11 VII

12 Any Conclusion of Law which should be deemed a Finding of Fact
13 is hereby adopted as such.

14 From these Findings the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 Appellant need not "knowingly" do an act in contravention
18 of a provision of Regulation I before a violation can be upheld.
19 In this case, the repeated occurrences of fires at the site would,
20 in any event, impart knowledge to appellant of their occurrence.

21 II

22 Appellant violated Sections 8.05(1) and 8.02(3) on March 21, 1978.
23 The \$250 civil penalty assessed therefor should be affirmed.

24 III

25 Appellant violated Sections 8.02(3) and 9.03(b) on September 6,
26 1978. The \$250 civil penalty assessed therefor should be affirmed.

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IV

It is a purpose of civil penalties to secure compliance with the policies of the Clean Air Act. Appellant has developed, and is about to execute, a plan which it believes will eliminate much of its fire problems. In view of such efforts, the two \$250 civil penalties assessed should be suspended.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

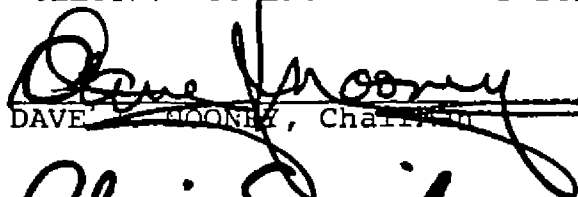
From these Conclusions the Board enters this

ORDER

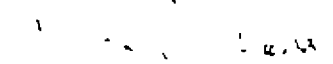
Each of the two \$250 civil penalties is affirmed but payment thereof suspended.

DATED this 5th day of October, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE MOONEY, Chairman


CHRIS SMITH, Member


DAVID AKANA, Member

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AND ORDER